



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0117; FRL-9940-63-Region 6]

Determination of Attainment; Texas; Houston-Galveston-Brazoria 1997 Ozone Nonattainment Area; Determination of Attainment of the 1997 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has determined that the Houston-Galveston-Brazoria (HGB) 8-hour ozone nonattainment area is currently attaining the 1997 ozone National Ambient Air Quality Standard (NAAQS). This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS for the 2012–2014 monitoring period and continues to monitor attainment of the NAAQS based on preliminary 2015 data. Thus, the requirements for this area to submit an attainment demonstration, a reasonable further progress (RFP) plan, contingency measures, and other State Implementation Plan (SIP) documents related to attainment of the 1997 ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 ozone NAAQS.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R06-OAR-2015-0117. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential

Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Wendy Jacques, (214) 665-7395, jacques.wendy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means the EPA.

I. Background

The background for today’s action is discussed in detail in our Proposal (80 FR 49187, August 17, 2015). In that document, we proposed to determine that the HGB ozone nonattainment area is currently in attainment of the 1997 ozone standard based on the most recent 3 years of quality-assured air quality data. Certified ambient air monitoring data show that the area has monitored attainment of the 1997 ozone NAAQS for the 2012–2014 monitoring period and continues to monitor attainment of the NAAQS based on preliminary 2015 data.

Our Proposal provides our rationale for this rulemaking. Please see the docket for this and other documents regarding our Proposal. The public comment period for our Proposal closed on September 16, 2015.

II. Response to Comments

We received no adverse comments. We received one letter dated September 2, 2015, from the Texas Commission on Environmental Quality (TCEQ or the Commenter) supporting our Proposal. A summary of the comment and our response follows.

Comment: The Commenter agrees with our Proposal to determine that the HGB ozone nonattainment area is currently in attainment of the 1997 ozone standard based upon certified ambient air monitoring data for the 2012-2014 monitoring period and preliminary 2015 monitoring data.

Response: We concur with the Commenter.

III. What Is the Effect of This Action?

In accordance with our Clean Data Policy as codified in 40 CFR 51.1118, a determination of attainment suspends the requirements for the TCEQ to submit the attainment demonstration and associated reasonably available control measures, RFP plans, contingency measures for failure to attain or make reasonable progress and other planning SIPs related to attaining the 1997 ozone NAAQS in the HGB area for so long as the area continues to attain the standard. However, should the area violate the 1997 ozone standard after this Clean Data Determination is finalized, the EPA would rescind the CDD.

IV. Final Action

Based on the Proposal¹ and the certified ambient air monitoring data contained therein, EPA finds that the HGB ozone nonattainment area has attained the 1997 ozone standard and meets the requirements in 40 CFR 51.1118. This Clean Data Determination provides that Texas is no longer required to submit the attainment demonstration and other planning SIPs related to attainment of the 1997 ozone NAAQS, for so long as the area is attaining the standard.

V. Statutory and Executive Order Reviews

¹ 80 FR 49187 August 17, 2015

This action makes a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and it would not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it merely makes a determination based on air quality data.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 15, 2015.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. Section 52.2275 is amended by adding paragraph (k) to read as follows:

§52.2275 Control strategy and regulations: Ozone.

* * * * *

(k) *Determination of Attainment.* Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** the EPA has determined that the Houston-Galveston-Brazoria 8-hour ozone nonattainment area has attained the 1997 ozone standard.

Under the provisions of the EPA's Clean Data Policy, this determination suspends the requirements for this area to submit an attainment demonstration and other State Implementation Plans related to attainment of the 1997 ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS.

[FR Doc. 2015-32752 Filed: 12/29/2015 8:45 am; Publication Date: 12/30/2015]